

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ANTONINA CIMATO

COMPLAINT

Plaintiff

vs.

UNITED STATES POSTAL SERVICE

Defendant

Plaintiff, by her attorneys, LoTempio P.C. Law Group, as and for her Complaint against Defendant herein, alleges as follows, upon information and belief:

1. Plaintiff was and is a citizen of the United States of America and a resident of the State of New York, County of Erie, residing at 4 Candlestick Court, Lancaster, NY 14086.

2. The Court has jurisdiction by reason of §409(c) of Title 39 of the United States Code, and Chapter 171 of Title 28 of the United States Code known as the Federal Tort Claim Act.

3. This Court is the appropriate venue for this action pursuant to 28 U.S.C. §1402(b) given that this is the district in which the Plaintiff resides.

4. Defendant, UNITED STATES POSTAL SERVICE, is an independent agency of the executive branch of the United States government which, through its agents, servants and employees at all times hereinafter mentioned, did and does operate a main Post Office located at 9630 Transit Road, Suite 1000 in the Town of Amherst, State of New York.

5. Pursuant to and in compliance with the statutes and regulations made and

provided, including 28 U.S.C. §2675(a), 39 U.S.C. §912 and 28 U.S.C. §2401(b), Plaintiff filed an administrative claim for Plaintiff's conscious pain and suffering and economic damage, on October 7, 2020 via certified mail, return receipt requested which was acknowledged received on or about that date with the federal agency out of whose activities the claims arose. A copy of the "Claim for Damage, Injury, or Death" filed on behalf of the Plaintiff, as well as the affidavit confirming service upon the United States Postal Service are annexed hereto collectively as **Exhibit "A."**

6. More than six months have elapsed since the Defendant, by and through said federal agency, was placed on notice of the administrative claims, and the United States Postal Service has failed to make a final disposition of the claim. As a result, the failure to resolve the claim within six months is deemed a final denial pursuant to 28 U.S.C. §2675.

7. That the within action is commenced within six (6) months of denial of Plaintiff's administrative claim.

8. Plaintiff has duly complied with all conditions precedent to commencement of this action.

9. On September 18th or 19th, 2019 at approximately 12-1 p.m., the Plaintiff, ANTONINA CIMATO, was located inside the United States Postal facility located at 9630 Transit Road, East Amherst, New York.

10. As the Plaintiff was in the location, a United States Postal Service employee, while in the course of his employment caused a display case to fall onto the Plaintiff.

11. As a result of the aforementioned incident, the Plaintiff has sustained

serious personal injuries, including, but not limited to a left wrist, left shoulder, neck and back injuries, resulting in her disability from employment subsequent to the date of the accident as well as medical treatment.

12. The individual who was working on the display when it fell was an employee of Defendant United States Postal Service and was in the course of his employment at the time of the accident.

13. The aforementioned accident was caused by the negligence and/or culpable conduct of the Defendant, its agents, servants and/or employees, without any contributory negligence on the part of the Plaintiff giving rise to the accident.

14. The Plaintiff has claimed damages in the amount of One Million Dollars for personal injuries sustained as a result of the aforementioned accident, and the Defendant has wholly failed to settle or otherwise compromise the Plaintiff's claim.

WHEREFORE, Plaintiff asks for an Order of this Court as follows:

- a) Granting the Plaintiff judgment in the above-captioned matter in the total amount of One Million Dollars; and
- b) For such other and further relief as this Court deems just and proper.

DATED: August 27, 2021

LoTEMPIO P.C. LAW GROUP

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